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STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

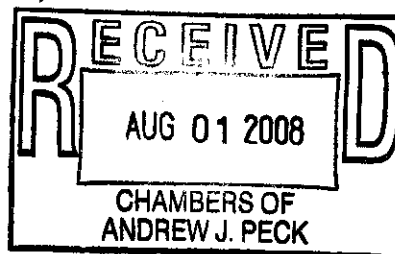
ANDREW M. CUOMO  
Attorney General

LESLIE G. LEACH  
Executive Deputy Attorney General  
Division of State Courts

August 1, 2008

JUNE DUFFY  
Assistant Attorney General in Charge  
Litigation Bureau

Via Fax (212)805-7933  
Hon. Andrew J. Peck  
United States Magistrate Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007



MEMO ENDORSED *12*

Re: Davis v Goord, et. al.  
07CV7309(AJP)

Dear Judge Peck:

We have a copy of the letter to your Honor from plaintiff's counsel. That letter is inaccurate in its attempt to characterize defendants' discovery responses as deficient. Given the extensive delay in this matter caused by plaintiff's non-activity, and that it was defendants who called the delay to the Court's attention, plaintiff is in no position to complain concerning activity related to defendants' diligent efforts to expedite the matter.

Plaintiff unreasonably seeks expedited response to a document demand not made until July 24, 2008, belatedly after defendants already produced voluntarily substantial discovery to plaintiff, including the contemporaneous correctional as well as physical and mental health records. The only records currently withheld are quality analysis material, created on review after decedent's demise. That material essentially repeats the contemporaneous records, adding analysis. Accordingly, plaintiff does not need the material in order to identify the factual sequences and witnesses.

In any event, we are taking steps with the appropriate agencies to determine whether the review material can be produced and we will be getting back to plaintiff's counsel on that point shortly. This process cannot be completed overnight.

Hon. Andrew J. Peck  
United States Magistrate Judge

August 1, 2008

Page Two

We are cooperating with plaintiff's counsel in setting a deposition schedule within the remaining discovery time parameters. At the same time, we have advised counsel that plaintiff needs to be realistic about how much activity can be conducted within the remaining period. Defendants will resist being unduly burdened by plaintiff's attempted press of activity within a highly constricted time frame where the time pressure was caused by plaintiff's delay.

Respectfully submitted,



Donald Nowve  
Assistant Attorney General  
(212) 416-8227

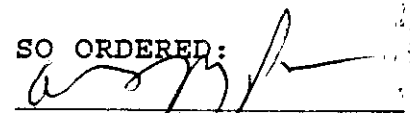
## MEMO ENDORSED

c: Via Fax (718)855-1033  
Attorney Gary Rawlins

1. The time for deposition is up and to Plaintiff's counsel request is \$250. Until that time, the "costs analysis" is not due. Plaintiff's counsel is in his own dilemma.
2. Plaintiff's counsel has due 8/6. If its court says not to proceed and wait for additional depositions, its list will be supplemented (if new depositions).
3. 20 request to hold the discovery deadline is DENIED at this time.

**BY FAX**

SO ORDERED:

  
Hon. Andrew Jay Peck  
United States Magistrate Judge

any Dis. to Court

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933  
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**Dated:** August 4, 2008

**Total Number of Pages:** 3

TO	FAX NUMBER
Donald Nowve, Esq.	212-416-6075
Gary Rawlins, Esq.	718-855-1033

## **TRANSCRIPTION:**

### **MEMO ENDORSED 8/4/08**

1. The time for defendant to respond to plaintiff's document requests is 8/25. Until that time, the "quality analysis material" is not due. Plaintiff's counsel created his own dilemma.
2. Plaintiff's deposition list is due 8/6. If the quality analysis material is produced and results in additional deponents, the list can be supplemented (if time allows).
3. The request to extend the discovery deadline is **DENIED** at this time.